In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 19172 of 2006

Date of Decision: 01.02.2007

M/s Ratti Woolen Mills

…Petitioner

Versus

State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Y.P. Singla, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The prayer made in this petition filed under Article 226 of the Constitution is for issuance of direction to the respondents to release the payment of Rs. 5,50,000/- deposited by the petitioner at the time of filing appeal as a condition precedent before the Deputy Excise and Taxation Commissioner (Appeals) Punjab.

Brief facts may be first noticed.

After hearing learned counsel for the parties, we find that the respondents have no right to retain the aforementioned amount in

the absence of any finding that the refund would adversely affect the recovery as per the provisions of Section 11(6) of the Punjab General Sales Tax Act, 1948. The reliance of the respondents on the order dated 6.12.2006 (R-1), passed under Section 12(6) of the Act is wholly misplaced because the aforementioned order lacks complete application of mind and the basic requirement of Section 12(6) remains unsatisfied. The aforementioned provision is reproduced hereunder for ready reference:-

> "Where an order allowing refund is the subject matter of an appeal or further proceedings or where any other proceedings under this act are pending and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose order shall be final."

A perusal of the aforementioned provisions shows that in cases where appeal or further proceedings under the 1948 Act are pending and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery then refund may be withhold and the case may be referred to the Commissioner whose order shall be considered final. On the date of passing of the order, there were no proceedings pending although the proceedings might have been contemplated. Moreover, the order is blissfully silent about the fact that the refund would adversely affect the recovery. The order is

absolutely laconic and cannot be sustained in the eyes of law nor the same can be relied upon for any purpose.

In view of the above, the writ petition is allowed. The order dated 6.12.2006 (R-1) is set aside and a direction is issued to the respondents to refund the amount of Rs. 5,50,000/- along with statutory interest.

The liberty to pass a fresh order is declined.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

February 1, 2007

Pkapoor